

Commodity Credit Corporation, USDA

§ 1467.15

program goals are fully and effectively achieved.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26285, June 2, 2009]

§ 1467.13 Modifications.

(a) *Easements*. (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the participant. The Chief will consult with FWS and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement, which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired or when adverse impacts will be mitigated by enrollment and restoration of other lands that provide greater wetland functions and values at no additional cost to the government.

(4) Modifications must result in equal or greater environmental and economic values to the United States and address a compelling public need, as determined by the Chief.

(b) *WRPO*. Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the participant and with consideration of site specific technical input from the FWS and the Conservation District. Any WRPO modification must meet WRP regulations and program objectives, comply with the definition of wetland restoration as defined in §1467.3, must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values to the United States.

§ 1467.14 Transfer of land.

(a) *Offers voided*. Any transfer of the property prior to the enrollment of the

easement, 30-year contract, or restoration cost-share agreement contract, including the landowner entering into a contract or purchase agreement to sell the land subject to offer, shall void the offer of enrollment.

(b) *Payments to landowners*. For easements with multiple annual payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) *Claims to payments*. With respect to any and all payments owed to participants, NRCS shall bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1467.15 Violations and remedies.

(a) *Easement violations*. (1) In the event of a violation of the easement, 30-year contract, or any restoration cost-share agreement involving the participant, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement or contractual obligations.

(3) At any time there is a material breach of the easement covenants or any associated agreement, the easement shall remain in force and NRCS may withhold or require the refund of any easement and cost-share payments

§ 1467.16

owed or paid to participants. Such withheld or refunded funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement. This remedy is in addition to any and all legal or equitable remedies available to the United States under applicable Federal or State law.

(4) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(b) *30-year Contract and Restoration Cost-Share Agreement violations.* (1) If the NRCS determines that a participant is in violation of the terms of a 30-year contract, or restoration cost-share agreement, or documents incorporated by reference into the 30-year contract or restoration cost-share agreement, the participant shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If the violation continues, the State Conservationist may terminate the 30-year contract or restoration cost-share agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a restoration cost-share agreement or 30-year contract termination is effective immediately upon a determination by the State Conservationist that the participant has:

- (i) Submitted false information;
- (ii) Filed a false claim;
- (iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part; or
- (iv) Taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(3) If NRCS terminates a restoration cost-share agreement or 30-year contract, the participant will forfeit all rights for future payments under the restoration cost-share agreement or 30-year contract, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

7 CFR Ch. XIV (1–1–10 Edition)

§ 1467.16 Payments not subject to claims.

Any cost-share, contract, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1467.17 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1467.18 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any administrative action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final Agency action except a decision of the Chief of the NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by the NRCS in furtherance of its federally held property rights are under the jurisdiction of the federal courts and not subject to review under administrative appeal regulations.

§ 1467.19 Scheme and device.

(a) If it is determined by the NRCS that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.